

N.D.A.G. Letter to Secrest (May 5, 1986)

May 5, 1986

Mr. T. L. Secrest
Hettinger City Attorney
P.O. Box 430
Hettinger, ND 58639

Dear Mr. Secrest:

Thank you for your letter of April 18, 1986, requesting assistance with an interpretation of N.D.C.C. § 40-08-03. This particular statute deals with a number of aldermen within a city as determined by the city's population.

According to your letter, the city of Hettinger has had four aldermen elected at large for several years despite the requirement of N.D.C.C. §40-08-03(3) providing a city with a comparable population to have six aldermen. Apparently, you are inquiring as to whether the city of Hettinger may continue to disregard the six aldermen requirement.

Your letter makes mention of the last paragraph of N.D.C.C. §40-08-03 as passed by the Legislature in 1985. This particular paragraph indicates that where a census of a city shows a population requiring more aldermen than are in the council at the time of taking that census, the council is not required to change the number of aldermen nor change the number of wards of that city unless a majority of the qualified electors of the city petition therefore. However, according to our research, this paragraph existed prior to 1985. The 1985 legislative change added the word "qualified" to the word "electors" and omitted a sentence as to the various forms of census by which a population of a city would be determined. Thus, the provision of N.D.C.C. §40-08-03 as contained within the last paragraph of this statute, allowing a city to not increase the number of aldermen following a census within that city unless a petition has been presented requesting such an increase in aldermen, has been the law of this state previous to 1985.

Based upon the last paragraph of N.D.C.C. §40-08-03, the city of Hettinger is not required to increase the number of aldermen sitting on its city council following a census indicating an increase in population unless a majority of the qualified electors of that city request such a change.

The fact that no change has been made pursuant to a census of the city for several years does not prevent the city from maintaining the status quo in terms of the number of aldermen sitting on the city council so long as the appropriate petition has not been presented by a majority of the qualified electors of the city.

Sincerely,

Nicholas J. Spaeth

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